

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FREDDY FIENGO,

Plaintiff,

v.

STARBUCKS CORP.,

Defendant.

NOTICE OF REMOVAL

Civil Action #:

**TO: United States District Court
Eastern District of New York**

Pursuant to 28 U.S.C. §1441 and 1332, the action entitled *Freddy Fiengo v. Starbucks Coffee Company and Starbucks Corporation*, commenced in the Supreme Court of the State of New York for the County of Suffolk, Index Number 608489/2022, is hereby removed by Defendant, Starbucks Corporation d/b/a Starbucks Coffee Company (incorrectly sued as “Starbucks Corp.”) (“Starbucks”), from the Supreme Court of the State of New York, County of Suffolk to the United States District Court for the Eastern District of New York by the filing of this Notice of Removal with the Clerk of the United States District Court for the Eastern District of New York.

Starbucks, by and through its attorneys, Goldberg Segalla LLP, respectfully states the following as grounds for removing this action:

Procedural History

1. On or about May 2, 2022, the above-captioned civil action was commenced in the Supreme Court of the State of New York, County of Suffolk. Plaintiff’s Summons and Complaint were assigned Index Number 608489/2022 (the “State Court Action”).

2. According to Affidavit of Service filed on May 17, 2022, the Summons and Complaint were served on Starbucks via the New York Secretary of State on May 10, 2022.

3. According to the Affidavits of Service filed on May 24, 2022 and May 25, 2022, the Summons and Complaint was purportedly served upon the Starbucks store located at 29 Hampton Road, Southampton, New York 11968. Starbucks denies that service of the Summons and Complaint on the subject store had any legal effect.

4. Copies of all process, pleadings, and orders served upon Starbucks in the State Court Action are attached hereto as **Exhibit A**.

5. The State Court Action seeks monetary damages for personal injuries allegedly sustained by plaintiff, Freddy Fiengo, while at the premises located at 29 Hamptons Road South Hampton, NY 11968 (“Premises”).

Parties

6. Upon information and belief, plaintiff is a resident of Suffolk County, in the State of New York.

7. Plaintiff is domiciled in New York State and is therefore a citizen of New York for diversity purposes.

8. Starbucks is foreign corporation incorporated under the laws of Washington and has a principal place of business at 2401 Utah Avenue S., Seattle, Washington 98134.

9. Starbucks is a publicly traded Washington corporation and no shareholder owns 10% or more of the shares of Starbucks stock.

10. “Starbucks Corp.” whom plaintiff improperly named as defendant, is not a legal entity.

11. Accordingly, full diversity exists between the parties.

Jurisdiction

12. This Court has subject-matter jurisdiction of the action pursuant to 28 U.S.C. § 1332 in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

Basis for Removal

13. This Court has subject-matter jurisdiction on the basis of diversity of citizenship under 28 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. § 1441(a) as this is the federal district court for the district embracing the place where the state court suit is pending.

14. Though the Complaint does not state the amount of damages that will be sought, in response to Starbucks discovery demands, plaintiff has claimed damages in the amount of \$5 million. Therefore, it is Starbucks good faith belief that the amount in controversy exceeds \$75,000, exclusive of interest and costs, making venue proper. Plaintiff's response to Starbucks Demand pursuant to CPLR §3017(c) dated June 24, 2022 is attached as **Exhibit B**.

15. Starbucks has timely brought this Notice of Removal within 30 days of its receipt of plaintiff's response to Starbucks Demand pursuant to CPLR §3017(c). *See 28 U.S.C. § 1446(b)*. Prior to plaintiff's June 24, 2022 response (attached as Exhibit B), Starbucks had no pleading, amended pleading, motion, order, or other paper from which it could ascertain that the case was removable.

16. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon plaintiff, by and through his attorney of record, and is being filed with the Clerk of the Court of the State of New York, Supreme Court, County of Suffolk.

17. No previous application has been made for the relief requested herein.

WHEREFORE, Starbucks files this Notice of Removal so that the entire State Court Action under Index No. 608489/2022 now pending in the State of New York, Supreme Court, County of Suffolk be removed to this court for all further proceedings.

Dated: Buffalo, New York
July 15, 2022

GOLDBERG SEGALLA LLP

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